

STATE OF MICHIGAN
UNEMPLOYMENT INSURANCE APPEALS COMMISSION

In the Matter of

[REDACTED]

Appeal Docket No.: [REDACTED] 22-003747

Claimant.

[REDACTED]

REMAND ORDER

Case History

On June 16, 2022, the Unemployment Insurance Agency (Agency) issued a redetermination affirming an earlier July 8, 2021 determination. The July 8, 2021 determination found the claimant ineligible for Pandemic Unemployment Assistance (PUA) benefits under Section 241 of the Continued Assistance Act (CAA) and Section 28(1)(a) of the Michigan Employment Security (MES) Act for failure to submit documentation substantiating employment, self-employment or plans to commence either. Pursuant to the claimant's timely appeal, a hearing before an Administrative Law Judge (ALJ) was noticed. The hearing was held on August 9, 2022, and the claimant was the only party to appear. He provided testimony about the work he did in 2020 for a man involved in the real estate business, and the records he submitted in response to a document he received from the Agency titled "Request for Information." The claimant did not produce those records for submission into evidence at the ALJ hearing.

At the end of hearing, the ALJ indicated that the record was closed for testimony but that she would keep it open until Friday, August 12, 2022, for the submission of documents only.

On September 6, 2022, the ALJ issued a decision and order (Order) which modified the June 16, 2022 redetermination, by finding that the claimant's income tax return fulfilled the documentation requirement of the CAA. Further, the ALJ waived restitution under Section 62(a)(iii) of the MES Act, ruling the claimant did not have to repay any benefits received from January 2, 2021, through July 3, 2021. No exhibits were marked or entered into the record at the hearing or post-hearing.

The Agency timely appealed to the Unemployment Insurance Appeals Commission (Commission) and requested that this Commission reverse and remand for rehearing. While the Agency's appeal was pending, the Michigan Office of Administrative Hearings and Rules (MOAHR) communicated to this Commission that the claimant timely submitted proposed exhibits to the MOAHR in accordance with the ALJ's instructions, but those documents did not reach the ALJ until after the record was closed and a decision had been issued.

Full Commission Decision

After a review of the record, we find that this matter must be remanded for additional evidence. We issue this decision as a full Commission to provide authority and guidance on evidentiary issues relating to cases under Section 241 of the CAA. As more fully explained below, these issues involve:

- (1) the foundational documents that must be included in the record at the ALJ hearing;
- (2) the duty to create a complete record at the ALJ hearing; and
- (3) the type of evidence that can satisfy the requirements of Section 241 of the CAA.

Having reviewed hundreds of appeals involving the substantiating document requirements under the CAA, it is a near certainty that similar evidentiary issues will arise in other cases. Further, these issues are of critical importance, as the failure to appropriately gather and review the necessary evidence to adjudicate these cases impacts claimants' eligibility for continued benefits under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) Act.

This case was chosen as a vehicle to offer this authority and guidance because it presents many of the typical evidentiary issues that arise in cases we have reviewed thus far. It is intended to provide guidance on the three typical cases under Section 241. The first type, such as this one, are those in which the Agency rules that the claimant has failed to provide documents. The second involves those in which the Agency rules that the submitted documents were inadequate, and the third are those in which the Agency rules the documents were submitted late.

The Substantiating Document Requirement under the CAA

We start with a brief explanation of the federal CARES Act and the amendments to it in December 2020. The CARES Act is a pandemic relief program that provides benefits for certain people who are not typically covered by state unemployment insurance. The portion of the CARES Act known as the Pandemic Unemployment Assistance (PUA) program (codified as 15 USC 9021) provides benefits to individuals who were unable or unavailable to work for reasons directly related to the COVID-19 pandemic. To be eligible for PUA benefits, a claimant must be a "covered individual" as defined in the CARES Act. Initially, the CARES Act allowed claimants to self-certify their eligibility for benefits. In other words, claimants could simply assert that they were able and available for work and that the COVID-19 pandemic precluded them from working. See 15 USC 9021(a)(3)(A)(ii).

In December 2020, Congress amended the CARES Act to require claimants to provide documentation to substantiate their pre-pandemic work as a requirement for entitlement to the PUA benefit extension for weeks ending January 2, 2021 through September 4, 2021. The relevant portion of the amendment for our purpose is Section 241 of the CAA, set forth in bold as follows:

- (3) The term "covered individual" –
 - (A) means an individual who—
 - (i) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation

under section 9025 of this title, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 9025 of this title;

* * *

(iii) [and] provides documentation to substantiate employment or self-employment or the planned commencement of employment or self-employment not later than 21 days after the later of the date on which the individual submits an application for pandemic unemployment assistance under this section or the date on which an individual is directed by the State Agency to submit such documentation in accordance with section 625.6(e) of title 20, Code of Federal Regulations, or any successor thereto, except that such deadline may be extended if the individual has shown good cause under applicable State law for failing to submit such documentation[.] [15 USC 9021(a)(3)(A)(iii) (emphasis added).]

The U.S. Department of Labor¹ (DOL) issued Unemployment Insurance Program Letter (UIPL) No. 16-20, Change 4 (January 8, 2021) [[Continued Assistance to Unemployed Workers Act of 2020—Pandemic Unemployment Assistance \(PUA\) Program: Updated Operating Instructions and Reporting Changes \(dol.gov\)](#)] to provide states with updated guidance as they implement changes to the PUA program, as amended by the CAA. The relevant guidance on the CAA program is included in UIPL 16-20, Change 4, and thus it will be referred to hereafter as the UIPL, or with the more precise section and page number where appropriate. With respect to the types of documents that satisfy the requirement, the UIPL sets forth a *non-exhaustive* list of acceptable documents that a claimant may submit to meet the requirement. Notably, the type of acceptable documents varies depending on the type of category of work in which the individual is engaged, as set forth in the list:

... In general, **proof of employment** includes, *but is not limited to*, paycheck stubs, earnings and leave statements showing the employer's name and address, and W-2 forms when available. **Proof of self-employment** includes, *but is not limited to*, state or Federal employer identification numbers, business licenses, tax returns, business receipts, and signed affidavits from persons verifying the individual's self-employment. **Proof of employment with organizations such as the Peace Corps, AmeriCorps, and educational or religious organizations** includes, *but is not limited to*, documentation provided by these organizations and signed affidavits from persons verifying the individual's attachment to such organizations. **Proof of the planned commencement of employment** includes, *but is not limited to*, letters offering employment, statements/affidavits by individuals (with name and contact

¹ UIPL 16-20, Change 4 was issued as an Action Request to State Workforce Administrators by the DOL's Employment and Training Administration.

I-11 information) verifying an offer of employment. **Proof of the planned commencement of self-employment** includes, *but is not limited to*, business licenses, state or Federal employer identification numbers, written business plans, or a lease agreement. Individuals must present the proof of employment and the state may verify the proof submitted using records the state may have available, such as wage records or state revenue records. [*Id.* Section C.2.a. at I-10 to I-11 (emphasis added).]

The UIPL also spells out *when* the claimant's duty to provide substantiating documents is triggered. The amount of time to supply the documents varies based on whether the claim is a new filing or continued claim. However, in all instances, the duty is not triggered until the Agency **directs** the claimant to supply the documents.²

- i. **Filing New Applications for PUA.** Individuals who file claims on or after January 31, 2021 (regardless of whether the claim was backdated), are required to provide documentation within 21 days of application or *the date the individual is directed to submit the documentation by the State Agency, whichever is later.*
- ii. **Filing Continued Claims for PUA.** Individuals who filed for PUA before January 31, 2021, and receive payments of PUA on or after December 27, 2020, (regardless of which week ending date is being paid), are required to submit documentation substantiating employment or self-employment, or the planned commencement of employment or self-employment, within 90 days of the application *or when directed to submit the documentation by the State Agency, whichever is later.* [*Id.* Section 4.b., p. 5 (emphasis added).]

For both kinds of claims, the deadline is extended if the claimant can demonstrate good cause for failure to submit the documents within the specified time frame. *Id.*

The UIPL further states that individuals who do not provide substantiating documents within the required time frame are not eligible for PUA. *Id.* at I-11.

Thus, the elements of a CAA Section 241 case are as follows:

1. Did the Agency issue a directive to the claimant to provide documents?
2. Did the claimant receive the directive?
3. If so, when were the claimant's documents due?
4. If the submission was late, is there good cause for a late submission?
5. Did the claimant's submission satisfy the substantiating document criteria set forth in Section C.2.a. of the UIPL?

² While the UIPL also includes the date of the application as the starting point for the deadline, it is nearly impossible to imagine a scenario in Michigan in which the Agency provided direction to the claimant to provide documents for a continued claim prior to the date of the application. For new applications, the directive might come at the same time as the application.

Documents Needed to Rule on a CAA Substantiating Documents Case

1. The Request for Information

To meet the first element in a CAA Section 241 case, the Agency must demonstrate that it “directed” the claimant to provide substantiating documents. In Michigan, the Agency’s directive to claimants is issued in UIA Form 1713 C/E (Rev. 02-21), titled Request for Information (RFI). The RFI includes the date it was mailed and the date the claimant’s response is due. Thus, this document is essential to establishing elements one and three of the case, as set forth above.

We next turn to element two, whether the claimant received the directive. As noted above, the claimant’s duty to provide documents is not triggered until the Agency “directs” the claimant. Direction cannot be accomplished without receipt. Thus, whether the claimant received the RFI must also be established. Absent receipt of that directive, a claimant cannot be held to the requirement to produce substantiating documents and cannot be deemed ineligible for PUA benefits for lack of a response.

Accordingly, in cases where the claimant acknowledges receipt of the RFI, the RFI should be marked and admitted into evidence, presuming there are no other foundational issues related to admission. As the proponent of the claim that it issued the directive, the Agency has the burden to establish issuance of the directive.³ Where the RFI is not marked and admitted, the ALJ and this Commission are precluded from relying upon it. See Mich Admin Code, R 792.11412(3).

The form RFI also defines the “documentation period.”⁴ This is the period of time for which the claimant is to provide the documents. On the form, the documentation period is calculated based on the “claim effective date.” The RFI also sets forth a series of questions and instructions. For example, if the claimant answers yes to the question, for “calendar year 2019, were you employed?,” the claimant is asked to answer a series of questions about that employment and is instructed to provide documents.

2. The Claimant’s Submissions

We now turn to the documents submitted by the claimant to the Agency. The claimant may have submitted documents to the Agency either in response to the RFI or as an attachment to a protest/appeal of a determination or redetermination. In some cases, the claimant may have provided documents that substantiate pre-pandemic work at earlier stages of the claim. These may also be used to meet the substantiation requirement. (See for example, UIPL 16-20, Change 4, Section C.2.a. at I-10, permitting use of documents submitted in support of a higher weekly benefit amount.) Like the RFI, these documents must be marked and admitted into evidence so that they may be evaluated to

³ See *Mayor of Cadillac v Blackburn*, 306 Mich App 512, 521; 857 NW2d 529 (2014) citing *Kar v Hogan*, 399 Mich 529, 539; 251 NW2d 77 (1976) (“The party alleging a fact to be true should suffer the consequences of a failure to prove the truth of that allegation.”)

⁴ A further discussion of the documentation period is set forth below.

determine whether they meet the requirements set forth in Section 241 and the relevant UIPL.⁵ If the claimant's documents were submitted beyond the deadline, the ALJ should gather evidence on whether good cause exists for the late submission.

A Fair Hearing Requires a Review of all the Relevant Documents

We have now spent some time discussing the elements of a Section 241 CAA case. It is evident from this discussion that "documents" are at the core of these cases. At the ALJ hearing, the RFI must be examined as it sets forth the Agency's directive. The claimant's submissions must be examined as they are in fact the subject of the Agency's determination. Problematically, however, these documents are often not available for review by the ALJ at the hearing.

Under the current practice, when a case on appeal is transferred for a hearing before an ALJ, the Agency provides the MOAHR with a pre-hearing packet that includes the underlying jurisdictional documents. These are then transferred to the ALJ assigned to the case prior to the hearing. At a minimum, the packet includes the Agency's initial determination, the redetermination, and any protests or appeals.⁶ Occasionally the Agency provides the RFI. *However, the Agency rarely, if ever, supplies the MOAHR with the claimant's response to the RFI; the documents submitted along with the RFI; or any other documents submitted by the claimant in the course of the claim.* If a claimant attached documents to a protest or appeal, those documents might be included in the pre-hearing packet.

This deficiency in the pre-hearing packet impairs the ALJ from building a complete record, as required under the standards set forth by the DOL. The Handbook for Measuring Unemployment Insurance Lower Authority Appeals Quality Criterion 3 on Exhibits⁷ makes it clear that the ALJ has a duty to build a complete record:

Overall, the intent of this criterion is to ensure that the hearing officer builds as complete of a record as possible including all competent, relevant, and material exhibits that are available; that these exhibits are properly described, authenticated, marked, and entered into the record; and that the parties are made aware of their contents and provided with the opportunity to object, explain, or rebut. (Emphasis added.)

⁵ The claimant should be prepared to provide an explanation for the records (in legal terms "foundation") and the ALJ should assist the claimant with an appropriate line of questions. If the ALJ rules that a document cannot be relied upon, the ALJ must mark it "rejected" and include it in the record, so it is available for review on appeal. Rule 792.10126(2).

⁶ When an ALJ's decision is appealed to this Commission, these items, along with the notice of hearing, the ALJ's decision, and the record evidence are transferred to the Commission from the hearing office. See Rule 792.11424.

⁷ United States Department of Labor, Employment and Training Administration, *Handbook for Measuring Unemployment Insurance Lower Authority Appeals Quality* (3rd edition, 2011) at 14, accessed on March 23, 2023 at https://www.dol.gov/sites/dolgov/files/ETA/handbooks/2011/ET_Handbook_No_382_3rd_Edition.pdf

The Michigan administrative rule governing hearings includes the same mandate, that the ALJ is to “secure the competent relevant and material evidence necessary to arrive at a *fair* decision.” Rule 792.11411(8) (emphasis added).

In our view, to ensure that the ALJs can fulfill their duty to secure a complete record and issue a fair decision, **the Agency should provide the MOAHR with all the evidence in its care relating to the CAA substantiating documents requirement. This should be provided in the pre-hearing packet in advance of the hearing.**

In considering this issue, judicial authority on the related issues of burden of proof and persuasion is instructive. As cited in *Brown v Beckwith Evans Co*, 192 Mich App 158, 168; 480 NW2d 311, 316 (1991), “[a]ny allocation of the burden of proof in a given case should be based on such factors as an estimation of the probabilities, fairness, and special policy considerations.” *Diedrich v Harten*, 103 Mich App 126, 131; 302 NW2d 618 (1981); and *Snider v Bob Thibodeau Ford, Inc*, 42 Mich App 708, 718; 202 NW2d 727 (1972) (placing of the burden of proof is “merely a question of policy and fairness based on experience in the different situations,” quoting 9 Wigmore, Evidence, §2486, p. 275).

Policy considerations and fairness dictate that the Agency provide the documents, particularly considering the role it plays as the administrator of benefits and keeper of records. In that role, the Agency issues the RFI. It then maintains the documents that the claimant submits in response. It further maintains records the claimant submitted at earlier stages of the claim and appeals process. As such, it is best situated to provide the documents to the MOAHR.

Further, it is the initial adjudicator of claimants’ eligibility. Section 32. As such, it should provide the MOAHR with the underlying documents upon which it based its decision. Finally, it is a party to all appeals. Section 34(3). In the CAA cases on appeal by the claimant, the Agency is the adverse party, advancing the same position it has taken in its role as adjudicator—that the claimant is not eligible for PUA, either because the claimant’s response was not timely or because the documents did not meet the criteria. In that sense, it is a proponent of a position and should thus produce the documents upon which it based its decision. See *Bunce v Secretary of State*, 239 Mich App 204, 216; 607 NW2d 372, 378 (1999) (“Generally, in contested cases [] under the APA, the proponent of an order or petition has the burden of proof and the burden of going forward.” Citing LeDuc, Michigan Administrative Law (1993), § 6:42, Ch. 6—p. 54).

We also find the decision of the Court of Appeals in *Lawrence v Mich Unemployment Ins Agency*, to be instructive. 320 Mich App 422; 906 NW2d 482 (2017). There, the contested issue was whether the Agency had paid the claimant benefits in each of two weeks. The claimant denied receipt of the payments, and the Agency did not appear at the hearing. On review of the record and the decision of the ALJ, the circuit court found the Agency’s statement in a determination that it had paid benefits to the claimant was sufficient to support the underlying ALJ’s decision. The Court of Appeals disagreed, ruling that those statements were not proof of payment, but simply requests for payment. Further, the Court refused to impose the burden on the claimant to prove non-receipt. Rather, the burden was on the Agency, since it had “the particularized knowledge

and control of information necessary to prove that it undertook the affirmative action of issuing a payment.” *Id.* at 440.

So too in CAA cases, the Agency has particularized knowledge and control of the documents submitted by claimants. Indeed, it is those very documents upon which it bases its determinations. Accordingly, it should produce those documents to the MOAHR so that the Agency’s position can be evaluated.

Furthermore, the provision of documents by the Agency is in accordance with the requirement to liberally apply the MES Act consistent with the legislative intent. See MCL 421.2. As explained by the Court of Appeals, in *Mich Employment Security Comm v Wayne State Univ*, as the MES Act was designed to protect the welfare of the working people of Michigan, we will be “slow to set up procedural roadblocks frustrating the clear legislative intent.” 66 Mich App 26, 30; 238 NW2d 191 (1975).

Currently, the major “roadblock” that claimants experience in CAA cases is navigating the appeals process. It is common for claimants to appear at the ALJ hearing without any of the documents necessary to substantiate work force attachment. In many cases, they assume that all the documents they submitted to the Agency are available to the ALJ for examination and will be the subject of the hearing. Often, they do not understand that the ALJs work for the MOAHR, and that the MOAHR and the Agency are separate entities.

Instructions are provided on the hearing notice on how to submit documents to the ALJ in advance of the hearing, but they are often missed or misunderstood.⁸ These problems are compounded because most claimants are unrepresented at these hearings, even though these cases often involve high dollar amounts in restitution.

Further, the failure to have documents available at the ALJ hearing slows adjudications. In many cases, ALJs are unwilling to rule a claimant is ineligible, simply because the claimant was unable to navigate the procedural rules for the admission of documents. These ALJs, recognizing that the very reason for the hearing in CAA cases is to examine documents, confront this problem by holding the hearing open for submission of additional evidence to the ALJ directly (as in this case) or continuing the hearing at a later date. See Rule 792.11413. Many other cases have been remanded by this Commission, along with an order to the ALJ to subpoena the Agency to produce these documents. This has had the inevitable result of delaying the disposition of cases and adding hearing time to an already massive hearing docket at the MOAHR.

In sum, the Agency’s provision of these documents would improve the quality of decision-making, promote fairness, and prevent substantial delay and additional workload at the hearing level.

⁸ We make this observation as the appellate body that has reviewed thousands of cases since our creation in 2019. This observation is not limited to PUA cases. The difficulty parties experience (both claimants and employers) spans across the CARES Act and regular benefit cases.

Based on these considerations, **the Agency's pre-hearing packet should include (in addition to the jurisdictional documents⁹):**

- 1. the RFI;**
- 2. the claimant's response to the RFI and all document attachments; and**
- 3. all documents submitted by the claimant in the course of a claim that could satisfy the Section 241 substantiating documentation requirements.**

Should the ALJ receive a pre-hearing packet that fails to include this information, the ALJ may utilize the tools set forth in Rule 792.11411(8):

To secure the competent, relevant, and material evidence necessary to arrive at a fair decision, an administrative law judge may do any of the following:

- (a) Adjourn the hearing.
- (b) Direct the parties to present required evidence.
- (c) Cause subpoenas to be issued.
- (d) Examine any party or witness.

Alternatively, the ALJ may return the case to the Agency under Rule 792.11410(5), to conduct a review of the records and then return the case to the MOAHR with the documents set forth above.

Documents in the pre-hearing packet

We now turn to the situation in which the pre-hearing packet includes the claimant's appeal, accompanied by documents intended to meet the substantiating document requirement. Oftentimes, the ALJ is reluctant to admit those documents into evidence because they were not submitted to the ALJ, and the other party in advance of the hearing consistent with the instructions on the hearing notice. That instruction states that a party must submit documents to the Judge and the opposing party in advance of the hearing as a prerequisite to offering documents in evidence. That instruction was established with respect to the typical contested case between a claimant and an employer in a regular benefit hearing. The underlying rationale is to ensure that the opposing party may examine the documents in advance of the hearing to be prepared to meet the evidence.

The interests align differently in a typical PUA case. In the PUA case, the only adverse party is the Agency. Under the scenario described above, it is the Agency itself that provided the documents to the ALJ in the pre-hearing packet. Since the Agency is already in possession of the documents, no harm can befall the Agency from a lack of advance submission. Further, if the Agency chooses to appear at the hearing, it can exercise its right to challenge the documents or cross-examine the claimant about the documents.

⁹ The jurisdictional documents should include the Monetary determination, any CAA determination or redetermination, and the claimant's appeal(s)/protest(s) along with any document attachments.

Above all, the ALJ's role in the hearing is to "secure the competent relevant and material evidence necessary to arrive at a fair decision." Rule 792.11411(8). Permitting the admission of documents, which are attached to the claimant's protests and provided to the ALJ in advance of the hearing in the pre-hearing packet, may be in furtherance of this goal. Furthermore, an examination of the documents in conjunction with the claimant's testimony may provide the determinative evidence on whether the substantiation requirement has been met. In that manner, a continuance of the hearing or remand from this Commission may be avoided.

To sum up, the Agency should, in its pre-hearing packet, provide the MOAHR the documents described above. If the ALJ receives a case that does not include all those materials, but discovers documents attached to a claimant protest that might meet the substantiating document requirement, examination of those documents may be warranted. If a proper foundation is made, the documents should be marked and admitted into evidence so that they may be relied upon as evidence by the ALJ and at this Commission.

The ALJ Decision

We now turn to the case before us. At the hearing below, the ALJ found the following facts based on claimant's testimony:

1. The claimant filed for PUA benefits in July 2020.
2. In February 2021, claimant received the Agency's RFI, which instructed him to submit documents to substantiate his pre-pandemic employment.
3. In February 2021, in response to the RFI, the claimant uploaded his 2020 Income Tax return in which he reported cash wages he earned installing signs and performing odd jobs.
4. In July 2021, in response to the Agency's adverse determination, the claimant contacted the Agency by phone and was told by an Agent that his tax return was not received. He was instructed to re-upload the tax return.
5. In July 2021, the claimant re-uploaded the tax return.

The ALJ ruled that the claimant satisfied the requirements of Section 241 based on the claimant's testimony that he had timely submitted his 2020 tax return to the Agency and that the tax return "fulfilled the proof described in the Department of Labor guidelines for the claimant's self-employment between January 1, 2019 (the start of the applicable tax year) and July 2020 (the date he filed the PUA claim)." The ALJ also found that the Agency committed administrative or procedural error by failing to acknowledge receipt of claimant's documents and misinforming him that the 2020 income tax return would satisfy the substantiation requirement.

Documentation Period

Next, we provide direction on the period of time for which a claimant can establish work force attachment. This will be referred to as the **documentation period**. Under the UIPL, the starting point for calculation of the period is the claim effective date, measured backward to January 1 of the previous tax year:

. . . Such documentation must demonstrate proof of employment or self-employment (or the planned commencement of such employment or self-employment) **at some point between the start of the applicable taxable year and the date of filing**. For example, an individual filing a **claim effective** December 27, 2020, must submit documentation that substantiates employment or self-employment which occurred between January 1, 2019 (the start of the applicable tax year) and December 27, 2020. [UIPL 16-20, Change 4, at I-11 (emphasis added).]

In the instant matter, the ALJ used the date the claimant filed for benefits, July of 2020, and measured from that date backward to the beginning of the previous tax year which was 2019. Stated another way, the ALJ found that claimant's documentation period was from January 1, 2019 to July 2020.

Problematically, most if not all of the form RFIs (UIA 1713 C/E) sent to claimants who filed for PUA benefits in 2020, limit the claimants' documentation period to the 2019 calendar year. We will use the RFI included in the pre-hearing packet in this case to illustrate this point.¹⁰ It states:

Based on your claim effective date of March 15, 2020, you are required to submit documentation for the **2019 calendar year**. This is referred to as your **"documentation period."** (Emphasis added.)

Comparing this period to that set forth in the UIPL, the RFI significantly reduces the period for which the claimant can show work force attachment. **Indeed, to use the period set forth in the RFI would be an impairment of the claimant's rights and a commission of legal error.**

In its appeal to this Commission, the Agency recognizes that the instructions set forth in the UIPL at I-10 should be used to calculate the documentation period. However, instead of using the filing date as the ALJ did, it uses the benefit year beginning (BYB) date of March 15, 2020, and asserts that claimant can demonstrate workforce attachment from January 1, 2019 until March 15, 2020.

The Agency appears to use the BYB as equivalent to the claim effective date specified in the UIPL.¹¹ We agree that this interpretation is consistent with the UIPL. In our view, **the BYB**

¹⁰ While the RFI was included in the pre-hearing packet, it was not admitted into evidence. Thus, we use it only as an example of the text in the form RFIs that we have seen in case after case.

¹¹ At the height of the pandemic, the UI system in Michigan was strained to the extent that many claimants were unable to use the online system to file for benefits contemporaneously with their unemployment. Thus, the filing date of the

should be used as the starting point to calculate the documentation period. Thus, for filings in 2020, the ALJ should disregard the period set forth in the RFI if it limits the documentation period to calendar year 2019.

The Agency's Appeal

The Agency contends that the ALJ erred in three ways. First, it maintains that a 2020 tax return alone is not sufficient to meet the substantiating document requirement because it does not establish *when* in 2020 the employment occurred.

Second, it contends that Section 241 of the CAA and UIPL 16-20, Change 4, specifically require an individual to submit documentation to continue PUA benefits after January 2021, and that testimony alone, as in this case, is insufficient.

Third, it contends that the ALJ erred by waiving restitution. It maintains that if the claimant does not meet the substantiation requirement, he must pay restitution. But further, assuming that the ALJ was correct, and claimant met the substantiation requirement, waiver is inappropriate because the claimant is eligible for benefits and there was no overpayment. Presumably, since the Agency seeks remand for rehearing, it is conceding that claimant's eligibility under the CAA remains an open question.

Sufficiency of Evidence and the Facts of the Underlying Case

We now return to the facts of this case to discuss the evidence necessary to meet the substantiation requirement.

The ALJ made the five factual findings set forth above. As they were uncontested at the hearing, we find that they should be considered the established facts of the case and undisturbed, unless the ALJ determines the Agency should be permitted to provide additional testimony. See Rule 792.11414(2) and (4). In addition to those facts, the claimant provided testimony that he did five jobs for the real estate individual in the period from January to March 2020 and that work ended due to the pandemic. The claimant also testified he spoke to the Agency by phone on multiple occasions throughout the claims and appeals process. In August 2020, he submitted a handwritten schedule to the Agency itemizing the date the work was performed and how much he was paid for the job.

We now return to the Agency's first argument, which is that the 2020 tax return alone (assuming it was submitted by the claimant) is insufficient because it would include income for the entirety of 2020, rather than exclusively for the documentation period.

Tax returns are, in fact, included in the list of acceptable documents set forth in the UIPL for self-employment.¹² We take note as the Agency argues, that wage information in a tax return "does not

claim was often many months after the BYB/effective date of the claim. Thus, it seems the better approach is to use the BYB as the claim effective date. See Section 421.46(a) for the definition of benefit year and Executive Order No. 2020-76 extending the date to file a timely new claim.

¹² Self-employed workers include independent contractors and gig economy workers. UIPL 16-20, Change 4, Section C.1. at I-4.

show when in 2020 the 2020 employment occurred.” However, that difficulty can be overcome by claimant testimony regarding the period in which the work was completed, or other evidence, such as a payment schedule, as referenced by the claimant in this case. As noted above, the list set forth in the UIPL is non-exhaustive, permitting the ALJ to consider other kinds of evidence. Thus, we agree with the Agency that tax returns alone do not fulfill the substantiation requirement. However, tax returns coupled with testimony or some other evidence, which establishes earnings in the documentation period, can satisfy the requirement. In this case, the claimant testified about the timeframe in which he did the work and that he provided a schedule to the Agency listing the dates of work and payment. We find that this kind of evidence could be coupled with the tax return to satisfy the CAA requirements.

The Agency’s second argument is that the UIPL specifically requires the submission of documents, and that testimony alone is insufficient to meet the standard. We agree with the Agency’s position.

As set forth above, the CAA explicitly requires the submission of documentation of employment, self-employment or the planned commencement of either. 15 USC 9021(a)(3)(A)(iii). Further, the UIPL spells out that the consequence for the failure to comply is ineligibility. UIPL 16-20, Change 4, Section C.2.c. at I-11.

Thus, the claimant’s testimony about his 2020 tax return was *not* sufficient to establish that his tax return met the substantiation requirement. The underlying rationale of Section 241 of the CAA was, as noted above, to require additional verification of the claimant’s attachment to the job market *beyond* the self-certification permitted under the CARES Act. That means that the claimant’s documents must be produced and included in the record. The UIPL notes that this documentation “serves as an important tool against fraud by requiring the individual to submit documentation to prove eligibility.” Section C.2 at I-10. Accordingly, we agree with the Agency and find that the ALJ’s ruling that the claimant met the substantiation requirement is not supported by the record evidence. The document the claimant relies upon to meet the substantiation requirement must be produced at the ALJ hearing and offered for admission.

As to the Agency’s third argument, that the ALJ erred by waiving restitution, we agree. Where the claimant meets the CAA requirements as the ALJ found below, waiver is inappropriate.

In summary, the record, as it stands, is insufficient to support the ALJ’s conclusion that the substantiating documentation requirement has been met. However, for the reasons stated above, it is appropriate to remand this case for additional evidence as outlined below.

THEREFORE, for the reasons stated above, the ALJ’s decision is set aside.

FURTHERMORE, we remand and provide the following instructions:

The determination and redetermination included Section 28(1)(a) of the MES Act. Section 28(1)(a) does not bear on the employment verification issue under the CAA and has the potential to cause confusion on the part of the claimant as to the issues on which he must be prepared for hearing. The new notice of hearing should not include Section 28(1)(a) as an issue.

The new notice of hearing shall list the Agency as a party and include an address where it can receive possible exhibits.

The ALJ's five factual findings set forth above are established as the facts of this case, and, on remand, there is no need to take any new evidence as to those facts or any other items already in the record.

In its appeal, the Agency specifically contests that the claimant submitted documents to the Agency in response to the RFI. This is an assertion without any record support and one which directly contradicts one of the ALJ's factual findings. In considering whether the Agency should be permitted to offer such evidence, the ALJ should consider whether the Agency can establish good cause for not appearing at the first hearing. See Rule 792.11414(2). She may also use her discretion as permitted under Rule 792.11414(4).

The ALJ credited the claimant's testimony that he submitted the 2020 tax return to the Agency by the deadline. We find that his testimony alone is sufficient to establish timely submission.

The ALJ shall subpoena the Agency to produce the following documents:

1. The RFI; and
2. All documentation that the claimant submitted to the Agency that substantiates employment or self-employment, whether it was submitted prior to the RFI, in response to the RFI, or attached to a protest or appeal of the underlying determinations in this case.

If the Agency determines, after a review of its records, that it does not have any submission from the claimant, it may provide an affidavit with such an attestation or produce a witness to testify as to this fact.

The claimant should submit documentation that may substantiate employment to both the ALJ and the Agency, in accordance with the instructions in the new notice of hearing, even if previously submitted. The claimant should do so as soon as he receives the new notice of hearing. If a proper foundation for the documents is laid, the ALJ shall admit the claimant's documentation as exhibits.

Additionally, the claimant should be prepared to identify the RFI that he received. If a proper foundation for the document is received, the ALJ shall admit the RFI into evidence.


The ALJ shall take testimony from the claimant regarding the RFI and his document submissions.

FURTHERMORE, the ALJ shall evaluate the evidence and issue a decision on the claimant's appeal of the underlying redetermination.

The Commission retains no jurisdiction in this matter.



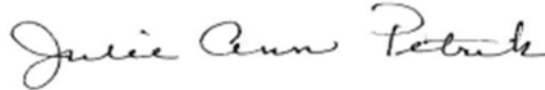
Alejandra Del Pino, Commissioner



Andrea C. Rossi, Commissioner



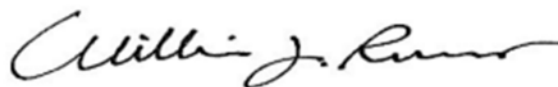
George Wyatt III, Commissioner



Julie A. Petrik, Chairperson



Lester A. Owczarski, Commissioner



William J. Runco, Commissioner

MIKHAIL ALBUSEIRI COMMISSIONER, CONCURRING:

I concur with the Commission's *en banc* remand order, but I write separately to express my own thought on the Agency's universal statement that testimony alone is always insufficient under the CAA for continued pandemic benefits to be issued. While UIPL 16-20, Change 4, requires that documentation be submitted to the Agency for continued pandemic assistance under the CAA, it also expressly allows for affidavits by individuals verifying the claimant's (1) self-employment, (2) attachment to a non-profit organization, or (3) offer of employment. UIPL 16-20, Change 4, Section C.1. at I-10-11. I posit that if a claimant submits an unsworn statement instead of an affidavit, the claimant may be able to cure the submission by offering the in-hearing testimony of the individual who should otherwise have served as the affiant. This is especially true when the Agency fails to argue the inadequacy of the submitted documentation before the ALJ. Therefore, securing the in-hearing testimony of those individuals in lieu of such documentation may be acceptable under the CAA.



Mikhail Albuseiri, Commissioner

Dated and mailed at
Lansing, Michigan, on
March 24, 2023

If You Need Help With Your Appeal

You are receiving this list because you may seek to obtain help with your appeal at the Unemployment Insurance Appeals Commission (Commission) or at a hearing before an administrative law judge (ALJ) if your case is remanded. **Below is a listing¹ of attorney and non-attorney agents who represent claimants, employers or both in appeals before the Commission².** You are not required to have a representative. Your appeal will be considered by the Commission regardless of whether you have an attorney or agent represent you.

Some of the representatives **offer their services for free**, others charge a fee. **It is your responsibility to contact the attorney or agent to determine the scope and cost of the representation.** The Commission does not endorse and makes no representations about the individuals or organizations in this list. The Commission does not guarantee that any representative will take your case. Representatives that also handle cases in state and/or federal court are designated in the listing in the far right hand column.

Please note the deadlines for filing applications for oral argument, written argument and additional evidence at the Commission are set forth in the enclosed Important Notice.

No-Charge Representatives for Unemployment Insurance Appeals

The following organizations provide **free** representation for parties who satisfy that organization's eligibility requirements.

*These organizations accept fraud cases.

Entity	Area Served & Contact Information	Parties Represented	Court
Counsel and Advocacy Law Line / Lakeshore Legal Aid* (will consider fraud cases)	Statewide 1.888.783.8190	Claimants	State and Federal Courts
Farmworker Legal Services*	Statewide 1.800.968.4046 Farmworker Law Hotline	Agricultural Workers (Claimants)	State and Federal Courts
Legal Aid of Western Michigan *Prioritizes fraud cases	Counties: Allegan, Berrien, Cass, Ionia, Kalamazoo, Kent, Lake, Mason, Mecosta, Montcalm, Muskegon, Newaygo, Oceana, Osceola, Ottawa, St. Joseph, Van Buren 616.774.0672 Kent County 888.783.8190 All other counties www.lawestmi.org	Claimants	State and Federal Courts
Legal Services of Eastern Michigan	Counties: Arenac, Bay, Clare, Genesee, Gladwin, Gratiot, Huron, Isabella, Lapeer, Midland, Saginaw, Sanilac, St. Clair, Tuscola 800.322.4512 www.lsem-mi.org	Claimants who pass the income, asset, & citizenship screening	State and Federal Courts
Legal Services of South Central Michigan* (will consider fraud cases)	Counties: Barry, Branch, Calhoun, Clinton, Eaton, Hillsdale, Ingham, Jackson, Lenawee, Livingston, Monroe, Shiawassee, Washtenaw 734.665.6181 Toll Free: 1.888.665.6181 15 S. Washington St. Ypsilanti, MI 48197 www.lsscm.org	Claimants who meet financial eligibility requirements (125% of federal poverty level)	State Courts
Sugar Law Center for Economic and Social Justice*	Statewide 313.993.4505 tparis@sugarlaw.org	Claimants	State and Federal Courts

¹ Inclusion in this list is voluntary by each of the listed individuals and organizations. This list is non-exclusive. There may be other attorneys or non-attorney agents able to help you.

² This list is separate and apart from the Advocacy Program which provides free representation for certain cases at ALJ hearings.

Fee-Based Representatives for Unemployment Insurance Appeals

*These representatives accept fraud cases.

Entity	Area Served & Contact Information	Parties Represented	Court
Carlisle, Carol*	Statewide 269.214.8803	Employers	
Cortese, Nanette L.* The Cortese Law Firm, PLC	Statewide 30200 Telegraph Road, Suite 400 Bingham Farms, MI 48025 248.593.6933 www.thecorteselawfirm.com	Claimants	State Courts
Dovitz, Susan*	Statewide 248.417.8931 susandovitz@gmail.com	Claimants & Employers	State Courts
Doyle, Pamela	Statewide 989.354.6960 989.464.8246 uiaspecialist@gmail.com	Claimants & Employers	
Grosjean, Glenda*	Statewide 313.729.9798 unemploymentadvocates@yahoo.com	Claimants	
Lochard, Beverly*	Statewide 866.554.8165 beverlylochardlaw@gmail.com	Claimants & Employers	State and Federal Courts
Postoian, Robert*	Statewide 248.798.8116 mrashleys@aol.com	Claimants & Employers	State Courts
Sanger, Brendan*	Statewide 888.729.2253 attorneysanger@gmail.com	Claimants	State Courts
Shane, Renee*	Statewide 248.255.8225 reneeshane@hotmail.com	Claimants	
Sutton, Dwaine C.*	Statewide 616.455.6515 2010 44 th Street SE, Grand Rapids MI 49508 dwainecs@yahoo.com	Claimants & Employers	State Courts
Wassel, Irene*	Statewide 586.552.9947 irene.wassel@gmail.com	Employers	State Courts
Webster, Stella*	Statewide 248.420.6437 1103 Crestmont Drive Lake Orion MI 48362 stella@nahma.net	Claimants	State Courts
Willenbrecht, Edith*	Statewide 248.495.6536 888.405.7004 2670 Buckner Rd., Suite 200 Lake Orion MI 48362 attyedith@hotmail.com	Claimants & Employers	State Courts
Wolff, Ellen	Statewide 248.553.2658 mrswolphus@sbcglobal.net	Employers	
Wolff, Erica*	Statewide 248.544.7740 248.563.8795 wolffgreen@yahoo.com	Employers	State Courts